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IPIB AO 2016-03

January 21, 2016

SUBJECT: Iowa Department of Transportation Public Notice for Local Government Projects

Kevin Kilgore
1695 115th Street
Diagonal, Iowa 50845

Dear Mr. Kilgore:

This opinion is in response to your letter of January 4, 2016, requesting an opinion from the Iowa Public Information Board (IPIB) pursuant to Iowa Code section 23.6 and rule 497—1.2. We note at the outset that IPIB's jurisdiction is limited to the application of Iowa Code chapters 21, 22, and 23, and rules in Iowa Administrative Code chapter 497. Advice in a Board opinion, if followed, constitutes a defense to a subsequent complaint based on the same facts and circumstances.

FACTUAL STATEMENT:

You inform us that Iowa Code chapter 26 requires a public hearing prior to public improvement contracts in excess of certain dollar thresholds. You also inform us that state agencies are exempt from this requirement. Finally, you inform us that the Iowa Department of Transportation (DOT) has provided an interpretation that county contracts funded by DOT controlled funds do not require a public hearing.

QUESTION:

Is the failure to include public notice or a public hearing under Iowa Code chapter 26 a violation of public notice requirements in Iowa Code section 21.4 and thus subject to the enforcement provisions of Iowa Code section 21.6?

OPINION:

As you were notified in IPIB Complaint No. 15FC:0086, the Board does not have jurisdiction to interpret or enforce notice provisions contained in Iowa Code chapter 26. As such, the Board does not have the statutory authority to question the interpretation of Iowa Code chapter 26 by the DOT. Iowa Code section 21.4 applies to a "meeting" as defined in Iowa Code section 21.2(2). Whether or not a public hearing should be conducted under Iowa Code chapter 26 does not trigger the application of a public meeting under Iowa Code chapter 21. Therefore, the enforcement mechanism in Iowa Code section 21.6 is inapplicable to your question.

Board Members

Robert Andeweg • Anthony Gaughan • Jo Martin • Andrew McKean • Gary Mohr • William Monroe
Kathleen Richardson • Suzan Stewart • Peggy Weitzl

In closing, we note that this opinion is limited to addressing the questions you raised and does not speak to whether or not any governmental body has complied with Iowa Code chapter 26.

BY DIRECTION AND VOTE OF THE BOARD

Suzan Stewart, Chair
Kathleen Richardson, Vice Chair
Robert Andeweg
Anthony Gaughan
Jo Martin
Andrew McKean
Gary Mohr
William Monroe
Peggy Weigl

Submitted by: W. Charles Smithson, IPIB Director